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## NEW APPLICATION

ORIGINAL

## BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH

Chairman

BOB STUMP

Commissioner

BOB BURNS

Commissioner

DOUG LITTLE

Commissioner

TOM FORESE

Commissioner

Arizona Corporation Commission

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In the Matter of the Application of OrbitCom, Inc. and )  
 Ionex Communications North, Inc. d/b/a Birch )  
 Communications for Approval of Transfer )  
 of Customers to Ionex Communications North, Inc. )

T-03864A-15-0144

T-04274A-15-0144

APPLICATION FOR  
 WAIVER OF SLAMMING RULES AND  
 NOTIFICATION OF CUSTOMER TRANSFER

Ionex Communications North, Inc. d/b/a Birch Communications ("Ionex") and OrbitCom, Inc. ("OrbitCom") (Ionex and OrbitCom collectively, the "Parties"), hereby request waiver of the slamming rules, A.A.C. R14-2-1901-1913, in connection with the transfer of the OrbitCom customers in Arizona to Ionex.

**I. DESCRIPTION OF APPLICANTS****A. Ionex Communications North, Inc. d/b/a Birch Communications**

Ionex is a South Dakota corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. Ionex was issued a certificate of convenience and necessity by the Commission on January 29, 2014 to provide local exchange and interexchange telecommunications services in Arizona.<sup>1</sup> Ionex is a wholly owned subsidiary of Birch Communications, Inc. ("BCI"), a Georgia corporation with headquarters located at

<sup>1</sup> Decision No. 74295.

3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. BCI and its subsidiaries are authorized to provide telecommunications services in 50 states and the District of Columbia.

**B. OrbitCom, Inc.**

OrbitCom is a South Dakota corporation with corporate headquarters at 1701 N. Louise Ave., Sioux Falls, South Dakota, 57107. OrbitCom was issued a certificate of convenience and necessity by the Commission on June 21, 2005 to provide local exchange and interexchange telecommunications services in Arizona.<sup>2</sup>

**II. DESIGNATED CONTACTS**

Correspondence concerning this matter should be directed to:

<b>For OrbitCom, Inc.</b>	<b>For Ionex Communications North, Inc. d/b/a Birch Communications</b>
Meredith A. Moore Cutler Law Firm, LLP 100 N. Phillips Ave., 9 <sup>th</sup> Floor Sioux Falls, SD 57104 605-335-4950 (telephone) 605-335-4961 (facsimile) meredithm@cutlerlawfirm.com	Law Office of Joan S. Burke 1650 N. First Avenue Phoenix, AZ 85003 602-535-0356 (telephone) joan@jsburkelaw.com

**II. TRANSFER OF CUSTOMERS**

On April 24, 2015, BCI and OrbitCom entered into an Asset Purchase Agreement (“Agreement”) pursuant to which BCI will purchase certain assets and customers of OrbitCom. Pursuant to the Agreement, BCI will purchase the following assets from OrbitCom: certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. BCI will not

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<sup>2</sup> Decision No. 67945.

assume any of OrbitCom's pre-closing liabilities or obligations. In connection with this purchase, customers in Arizona currently served by OrbitCom will be transferred to Ionex.

Ionex will make any necessary revisions to its existing rates, terms, and conditions to incorporate OrbitCom's current services and rates so that affected customers will continue to receive the same services that they currently receive without any immediate changes to their service offerings or rates. Ionex will provide services to OrbitCom customers utilizing its existing interconnection agreements, 911 arrangements, and numbering arrangements.

Applicants request a waiver of A.A.C. R14-2-1901 et seq generally and R14-2-1904 and R14-2-1905 specially, as those rules may apply to this transaction. This transaction is designed to be seamless to the former OrbitCom customers insofar as there will be no change to customers' rates, terms, and conditions of service and the transfer will occur with no charge to customers as they transition to Ionex. Ionex will incorporate into its tariff the rates, terms and conditions of services currently provided to OrbitCom customers. Ionex will assume all managerial, technical and financial responsibilities in connection with providing service to the former OrbitCom customers.

Written notice of the transfer will be provided to OrbitCom customers via First Class United States mail and in accordance Section 64.1120(e), Verification of Orders for Telecommunications Services, as amended, of Federal Communications Commission ("FCC") rules. 47 C.F.R. 64.1120(e). A copy of the draft customer notice letter is provided as Exhibit A to this Waiver Application.

Application respectfully requests waiver of Commission slamming rules, A.A.C. R14-2-1901 et seq., in connection with the transfer of customers from OrbitCom to Ionex.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of May 2015.

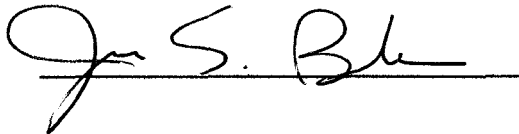
LAW OFFICE OF JOAN S. BURKE

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joan@jsburkelaw.com

Attorney for Ionex Communications North, Inc.  
d/b/a Birch Communications

ORIGINAL and thirteen (13) copies  
of the foregoing filed  
this 6<sup>th</sup> day of May, 2015 with:

The Arizona Corporation Commission  
Docket Control  
1200 W. Washington Street  
Phoenix, Arizona 85007

A handwritten signature in black ink, appearing to read "Joan S. Burke", is written over a horizontal line.